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11 MAR -3 PM 3:45  
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LOS ANGELES

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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 VIVIAN R. DULBERG,  
14 Derivatively on Behalf of Herself  
15 and All Others Similarly Situated,

16 Plaintiff,

17 vs.

18 FRANCO PLASTINA, WILLIAM  
19 H. EVERETT, GREGORY S. RUSH,  
20 MARK A. FLOYD, RONALD W.  
21 BUCKLY, HUBERT DE  
22 PESQUIDOUX, DAVID R. LAUBE,  
23 CAROL G. MILLS, KRISH  
24 PRABHU, AND MICHAEL R.  
25 RESSNER

26 Defendants,

27 -and-

28 TEKELEC,

Nominal Defendant.

Case No.

**SACV11-00351 JVS (RNBx)**

**SHAREHOLDER DERIVATIVE  
COMPLAINT**

DEMAND FOR JURY TRIAL

## INTRODUCTION

1  
2 1. Plaintiff, by and through her attorneys, brings this action derivatively  
3 on behalf of nominal defendant Tekelec (“Tekelec” or the “Company”) and  
4 alleges upon personal knowledge as to herself and her own acts, and as to all other  
5 matters based upon the investigation conducted by her attorneys which included,  
6 among other things, a review of Securities and Exchange Commission (“SEC”)   
7 filings, documents, analyst reports, news reports, press releases, and other publicly  
8 available information regarding the Company, as follows:

9 2. This is a shareholder derivative action brought on behalf of the  
10 Company against the members of its Board of Directors (“Board”) and certain of  
11 its executive officers seeking to remedy defendants’ breaches of fiduciary duties  
12 and other violations of the law that occurred from at least February 11, 2010  
13 through August 5, 2010 (“Relevant Period”).  
14

15 3. Defendant Tekelec is a global provider of communications network  
16 software. Throughout the Relevant Period, Defendants in their public filings,  
17 press releases and communications with analysts touted the Company’s sales  
18 growth in emerging markets generally, and on the Indian market in particular. For  
19 example, in a conference call with analysts, Chief Executive Officer (“CEO”) and  
20 Director Franco Plastina (“Plastina”) specifically referred to the Company’s  
21 progress in the Indian and Brazilian markets saying that, *“our position in India  
22 and Brazil remains strong.”*

23 4. Defendants, however, had no reasonable basis for their positive  
24 statements about growth prospects in emerging markets, and when the truth was  
25 finally revealed, the Company suffered substantial injury. Indeed, Tekelec shares  
26 fell *nearly 20%* on May 6, 2010, after Defendants revealed in their 2010 first  
27 quarter earnings report that the Company’s financial results were impacted by  
28

1 regulations in India that would delay approximately \$10 million worth of  
2 orders. Defendants, however, only revealed part of the difficulties that the  
3 Company was facing and continued to conceal the true scope of the problems  
4 impacting Tekelec's business.

5       5. Sales growth in emerging markets continued to fail to materialize in  
6 the second quarter of 2010, as Tekelec's projected sales continued to be affected  
7 by the security regulations in India and by credit issues in the Middle East and  
8 Africa. Tekelec's orders in the second quarter were \$72.1 million, **down 31%**  
9 from the same period in 2009. Defendants admitted that the fallout from the India  
10 security regulations would delay recognition of \$10 million in projected revenues.  
11 Tekelec's shares fell another **9.37%**, to \$12.48 per share, in reaction to the news.

12       6. Additionally, after nearly five years at the helm of the Company,  
13 CEO Plastina unexpectedly announced his resignation from Tekelec, with his  
14 resignation effective as of January 4, 2011. Plastina's resignation came in  
15 conjunction with the Company's lowering of its annual forecast for 2010. At the  
16 same time, Tekelec lowered its revenue view to a range of \$415 million to \$425  
17 million from its May 6, 2010 forecast of \$465 million to \$480 million, and  
18 lowered its adjusted per-share earnings estimate to a range of 62 cents to 67 cents  
19 from 85 cents to \$1.00.

20       7. Defendants were fully aware of the problems related to sales growth  
21 in emerging markets, and yet they breached their fiduciary duties and caused  
22 significant harm to the Company.  
23

#### 24                               **JURISDICTION AND VENUE**

25       8. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(2), as  
26 plaintiff and defendants are citizens of different states and the amount in  
27 controversy exceeds \$75,000, exclusive of interests and costs. This action is not a  
28

1 collusive action designed to confer jurisdiction on a court of the United States that  
2 it would not otherwise have.

3 9. This Court has jurisdiction over each defendant because each  
4 defendant is either a corporation that conducts business in, and maintains  
5 operations in, this District, or is an individual who has sufficient minimum  
6 contacts with this District so as to render the exercise of jurisdiction by the  
7 District courts permissible under traditional notions of fair play and substantial  
8 justice.

9 10. Venue is proper in this Court under 28 U.S.C. §1391(a) because: (1)  
10 one or more defendants either reside in, or maintain executive offices in, this  
11 District; (2) a substantial portion of the transactions and wrongs complained of  
12 herein, including the defendants' primary participation in the wrongful acts  
13 detailed herein, occurred within this District, and (3) defendants have received  
14 substantial compensation in this District by conducting business herein and by  
15 engaging in numerous activities that have had an effect in this District.  
16

17 **THE PARTIES**

18 11. Plaintiff Vivian R. Dulberg ("plaintiff") is a current shareholder of  
19 Tekelec and has been a shareholder of the Company during the Relevant Period.  
20 Plaintiff resides in New York, New York.

21 12. Nominal defendant Tekelec is engaged in the design, development,  
22 manufacture, marketing, sale and support of telecommunications products and  
23 services. Defendant Tekelec is a California corporation that maintains its  
24 headquarters in Morrisville, North Carolina. Tekelec's Stock is traded under the  
25 symbol TKLC on the Nasdaq Stock Exchange.

26 13. Defendant Franco Plastina ("Plastina") served as Tekelec's President,  
27 CEO and a Director of the Company during the Relevant Period. Plastina joined  
28

1 Tekelec as President and CEO and as a director in February 2006. From  
2 September 2005 until joining Tekelec, Plastina served as an Executive in  
3 Residence at Warburg Pincus LLC, a private equity firm. From May 2003 until  
4 July 2005, Plastina held various executive positions with Proxim Corporation, a  
5 provider of wireless infrastructure equipment for wireless fidelity, or Wi-Fi, and  
6 wireless broadband markets, including Executive Chairman from January 2005  
7 until July 2005, and President and CEO and a director from May 2003 until  
8 December 2004. Plastina also serves as a director of Cree, Inc.

9 14. Defendant William H. Everett ("Everett") served as Tekelec's  
10 Executive Vice President and Chief Financial Officer ("CFO") until his retirement  
11 from the Company on March 31, 2010, at which point he served as a "consultant"  
12 to the Company for the balance of the Relevant Period.

13 15. Defendant Gregory S. Rush ("Rush") served as Tekelec's Chief  
14 Accounting Officer, Vice President and Corporate Controller until April 27, 2010  
15 when the Company announced that Defendant Rush had been appointed as  
16 Tekelec's Senior Vice President and CFO, replacing Defendant Everett.

17 16. Defendant Mark A. Floyd ("Floyd") served as a member of the  
18 Company's Board of Directors during the Relevant Period. Floyd has served as  
19 Chairman of Tekelec's Board of Directors and as a member of the Company's  
20 Audit and Compensation Committees. Floyd has served as a director of the  
21 Company since October 2004, was appointed as Vice Chairman of the Board in  
22 February 2006, and became Chairman of the Board in January 2007.  
23 Additionally, Floyd was named CEO of SafeNet, Inc., an information security  
24 software company, in June 2009, and has also served as CEO and President of  
25 Entrisphere, Inc., a telecommunications equipment manufacture, from August  
26 2002 until its sale to Ericsson in February 2007. Floyd has also served as a  
27  
28

1 director of SafeNet, Inc. and Riverbed Technology, Inc., a telecommunications  
2 equipment manufacturer, and previously served as a director of Carrier Access  
3 Corp., a telecommunications equipment manufacturer, until its February 2008  
4 acquisition by Turin Networks, Inc.

5 17. Defendant Ronald W. Buckly ("Buckly") served as a member of the  
6 Company's Board of Directors during the Relevant Period. Buckly has served as  
7 a director since November 2007 and as a member of the Company's Corporate  
8 Development Committee. Since April 2007, Buckly has served as Senior Vice  
9 President, Corporate Affairs and General Counsel of Ixia, a provider of IP  
10 performance test systems. Buckly has also served as Senior Vice President,  
11 Corporate Affairs and General Counsel from January 2004 until his resignation  
12 from that office in December 2006. Buckly also served as Tekelec's Vice  
13 President and General Counsel from April 1998 until January 2004, and as the  
14 Company's Corporate Secretary from 1987 until May 2007. From April 1998  
15 until November 2003, Buckly also served as counsel to Bryan Cave LLP, legal  
16 counsel to the Company.  
17

18 18. Defendant Hubert de Pesquidoux ("de Pesquidoux") served as a  
19 member of the Company's Board of Directors during the Relevant Period.  
20 Defendant de Pesquidoux has served as a director since May 2009 and has served  
21 on the Company's Audit and Corporate Development Committees. Since  
22 November 2009, de Pesquidoux has served as CEO of HDP Consulting, a  
23 consulting company. From 1991 until December 2009, de Pesquidoux held  
24 various positions at the telecommunications company Alcatel-Lucent SA (and its  
25 predecessor, Alcatel SA and its affiliates), where he most recently served as CFO  
26 from November 2007 until December 2009, and as President of the Enterprise  
27 business from November 2006 until December 2009. Defendant de Pesquidoux  
28

1 has also served as President of Alcatel North America from June 2003 until  
2 November 2006.

3 19. Defendant David R. Laube ("Laube") served as a member of the  
4 Company's Board of Directors during the Relevant Period. Laube has served as a  
5 director since August 2008 and has served as chairperson of Tekelec's  
6 Nominating and Corporate Governance Committee and as a member of the  
7 Company's Audit Committee. Since 2001, Laube has been Executive in  
8 Residence at the Business School at the University of Colorado, Denver. From  
9 1983 until 2000, Laube served in various senior financial and information  
10 technology positions at US West, Inc. (which was acquired by Qwest  
11 Communications International Inc.), where he most recently served as Vice  
12 President and Chief Information Officer from 1996 to June 2000. Laube has also  
13 served as a director of Network Equipment Technologies, Inc., a network  
14 equipment manufacturer, which he served as chairman of the audit and  
15 nominating/corporate governance committees and a member of the compensation  
16 committee. Laube previously served as a director of Carrier Access Corp. until its  
17 February 2008 acquisition by Turin Networks, Inc.

19 20. Defendant Carol G. Mills ("Mills") served as a member of the  
20 Company's Board of Directors during the Relevant Period. Mills has served as a  
21 director since June 2007, as chairperson of Tekelec's Compensation Committee,  
22 and as a member of the Company's Nominating and Corporate Governance  
23 Committee. Since February 2006, Mills has been an independent consultant.  
24 Mills has served as Executive Vice President, Router Business Unit, of Juniper  
25 Networks, Inc., a provider of networking and security solutions, from October  
26 2004 until March 2006. Mills has also served as a director of Adobe Systems  
27 Incorporated, a computer software company, where Mills served as the  
28



1 chairperson of the executive compensation committee and a member of the  
2 nominating and governance committee. Mills has also served as a director of Blue  
3 Coat Systems, Inc., a network security and management company, where Mills  
4 has served as the chairperson of the compensation committee and a member of the  
5 stock option committee.

6 21. Defendant Krish Prabhu ("Prabhu") served as a member of the  
7 Company's Board of Directors during the Relevant Period. Prabhu has served as  
8 a director since May 2008 and as chairperson of Tekelec's Development  
9 Committee and as a member of the Company's Compensation Committee.  
10 Prabhu served as CEO and President of the telecommunications company Tellabs,  
11 Inc. from February 2004 until Prabhu's retirement in April 2008, and has served  
12 as an advisor to various companies in the telecommunications and semiconductor  
13 industries. Prabhu has also served as a director of the telecommunications  
14 company ADC Telecommunications, Inc., where Prabhu has served on the audit  
15 committee and the finance/strategic planning committee. Additionally, Prabhu  
16 has served as a director of Altera Corporation, a semiconductor company, where  
17 he has served on the compensation committee, as vice chairman of the supervisory  
18 board of ADVA AG Optical Networking, an optical networking equipment  
19 company.  
20

21 22. Defendant Michael R. Ressler ("Ressler") served as a member of the  
22 Company's Board of Directors during the Relevant Period. Ressler has served as  
23 a director since November 2006, as the chairperson of Tekelec's Audit  
24 Committee, and as a member of the Company's Corporate Development  
25 Committee. From 1980 until his retirement in 2002, Ressler held a number of  
26 senior management positions in finance and operations at Nortel Networks, where  
27 Ressler most recently served as Vice President and General Manager.  
28



1 Additionally, since 2002, Ressler served as an advisor in the College of  
2 Management at North Carolina State University, where, from 2002 until 2004,  
3 Ressler was also an adjunct professor of finance and accounting. Ressler has  
4 also served as a director of Exide Technologies, a battery company, where  
5 Ressler has served as chairman of the finance committee and as a member of the  
6 audit committee. Ressler has also served as chairman of the audit committee at  
7 Magellan Health Services, Inc., a health care management company, and as  
8 director for the past five years of Entrust, Inc., Arsenal Digital Solutions  
9 Worldwide, Inc., Riverstone Networks, Inc., and Proxim Corporation.

10 23. Defendants Plastina, Everett, Rush, Floyd, Buckley, de Pesquidoux,  
11 Laube, Mills, Prabhu, and Pressner are collectively referred to herein as the  
12 "Individual Defendants."  
13

#### 14 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

15 24. By reason of their positions as officers and directors of the Company,  
16 and because of their ability to control the business and corporate affairs of the  
17 Company, the Individual Defendants owed the Company and its shareholders the  
18 fiduciary obligations of good faith, trust, loyalty, and due care, and were, and are,  
19 required to use their utmost ability to control and manage the Company in a fair,  
20 just, honest, and equitable manner. The Individual Defendants were, and are,  
21 required to act in furtherance of the best interests of the Company and its  
22 shareholders so as to benefit all shareholders equally and not in furtherance of  
23 their personal interest or benefit.

24 25. Each director and officer of the Company owes to Tekelec and its  
25 shareholders the fiduciary duty to exercise good faith and diligence in the  
26 administration of the affairs of the Company and in the use and preservation of its  
27 property and assets, and the highest obligations of fair dealing. In addition, as  
28

1 officers and directors of a publicly held company, the Individual Defendants had a  
2 duty to promptly disseminate accurate and truthful information with regard to the  
3 Company's revenue, margins, operations, performance, management, projections  
4 and forecasts so that the market price of the Company's stock would be based on  
5 truthful and accurate information.

6 26. The Individual Defendants, because of their positions of control and  
7 authority as directors and/or officers of Tekelec, were able to and did, directly  
8 and/or indirectly, exercise control over the wrongful acts complained of herein, as  
9 well as the contents of the various public statements issued by the Company.  
10 Because of their executive, managerial and directorial positions with Tekelec,  
11 each of the Individual Defendants had access to adverse, non-public information  
12 about the financial condition, operations, and misrepresentations made.

13 27. At all times relevant hereto, each of the Individual Defendants was  
14 the agent of the other Individual Defendants and of Tekelec, and was at all times  
15 acting within the course and scope of such agency.

16 28. To discharge their duties, the officers and directors of Tekelec were  
17 required to exercise reasonable and prudent supervision over the management,  
18 policies, practices and controls of the financial affairs of the Company. By virtue  
19 of such duties, the officers and directors of Tekelec were required to, among other  
20 things:

21 a. manage, conduct, supervise and direct the business affairs of  
22 Tekelec in accordance with all applicable laws;

23 b. neither violate nor knowingly permit any officer, director or  
24 employee of Tekelec to violate applicable laws, rules and regulations;

25 c. establish and maintain systematic and accurate records and  
26 reports of the business and affairs of Tekelec and procedures for the reporting of  
27  
28

1 the business and affairs to the Board and to periodically investigate, or cause  
2 independent investigation to be made of, said reports and records;

3 d. neither engage in self-dealing nor knowingly permit any  
4 officer, director or employee of Tekelec to engage in self-dealing;

5 e. ensure that the Company complied with its legal obligations  
6 and requirements, including acting only within the scope of its legal authority and  
7 disseminating truthful and accurate statements to the SEC and the investing  
8 public;

9 f. conduct the affairs of the Company in an efficient, business-  
10 like manner so as to make it possible to provide the highest quality performance of  
11 its business, to avoid wasting the Company's assets, and to maximize the value of  
12 the Company's stock;

13 g. properly and accurately guide investors and analysts regarding  
14 the true financial condition of the Company at any given time, including making  
15 accurate statements about the Company's financial results and prospects, and  
16 ensuring that the Company maintained an adequate system of financial controls  
17 such that the Company's financial reporting would be true and accurate at all  
18 times; and

19 h. remain informed regarding how Tekelec conducted its  
20 operations, and, upon receipt of notice or information of imprudent or sound  
21 conditions or practices, to make reasonable inquiry in connection therewith, and to  
22 take steps to correct such conditions or practices and make such disclosures as  
23 necessary to comply with applicable laws.

24  
25 29. Each Individual Defendant, by virtue of his or her position as a  
26 director and officer, owed to the Company and its shareholders the fiduciary  
27 duties of loyalty, good faith, the exercise of due care and diligence in the  
28

1 management and administration of the affairs of the Company, as well as in the  
2 use and preservation of its property and assets. The conduct of the Individual  
3 Defendants alleged herein involves a violation of their obligations as directors and  
4 officers of Tekelec, the absence of good faith on their part and a reckless disregard  
5 for their duties to the Company and its shareholders that the Individual Defendants  
6 were aware or should have been aware posed a risk of serious injury to the  
7 Company. The conduct of the Individual Defendants, who were also officers  
8 and/or directors of the Company, has been ratified by the remaining Director  
9 Defendants who collectively comprised all of Tekelec's Board during the  
10 Relevant Period.

11  
12 30. The Individual Defendants breached their duties of loyalty and good  
13 faith by allowing defendants to cause, or by themselves causing, the Company to  
14 misrepresent its financial results and prospects, as detailed herein, and by failing  
15 to prevent employees and/or officers of the company from taking such illegal  
16 actions. In addition, the Company is now the subject of class action litigation  
17 alleging violation of federal securities laws, which necessitates the Company  
18 incurring excess costs arising from the Individual Defendants' wrongful course of  
19 conduct.

20 31. Additionally, Tekelec has established a Code of Business Conduct  
21 ("Code") that applied to all employees of the Company. The purpose of the Code  
22 was to deter illegal or unethical acts and promote the following:

- 23
- 24 • honest and ethical conduct, including the ethical handling of actual  
25 or apparent conflicts of interest between personal and professional  
26 relationships;
  - 27 • full, fair, accurate, timely and understandable disclosure in reports  
28 and documents that the Company files with, or submits to, the  
Securities and Exchange Commission and in other public  
communications made by the Company;

- 1 • compliance with applicable governmental laws, rules and regulations;
- 2 • prompt internal reporting to an appropriate person or persons
- 3 identified herein of violations of this Code; and
- 4 • accountability for adherence to this Code.

5 32. With respect to the accuracy of record keeping and disclosures the  
6 Code provides:

7  
8 **a. Create Accurate Records**

9 Tekelec is committed to maintaining and providing truthful  
10 information that fully satisfies applicable legal disclosure  
11 requirements. The U.S. securities laws, including the Sarbanes-  
12 Oxley Act of 2002, protect investors and govern Tekelec's  
13 disclosure of information. These laws require us to create and  
14 maintain full, fair, timely, accurate and understandable records. All  
employees are responsible for Tekelec's compliance with these laws.

15 You must create accurate records that reflect the true nature of the  
16 transactions and activities that they record (including the reporting  
17 of time and documenting attendance and absence). You must  
18 resolve discrepancies in any records and make appropriate  
19 corrections. If you suspect or learn that records are misleading or  
20 contain errors, you must promptly report such issues. Because even  
a minor error can affect the truthfulness of a record, you must report  
all errors, regardless of their size or how long ago they may have  
occurred.

21 Tekelec does not tolerate falsification or improper alteration of  
22 records. It is never appropriate to direct someone else to prepare or  
23 approve a false or misleading record. In addition, it is not a defense  
24 to say that someone else directed you to make a record that you  
knew or had reason to suspect was false or misleading.

25 If you have concerns about a record's accuracy and you have  
26 brought them to your supervisor's attention and your supervisor has  
27 failed to address them, you must report those concerns to other  
28 Escalation Parties.

b. **Promote Transparent and Complete Disclosure**

Tekelec is committed to transparency in financial reporting to enhance investors' understanding of the Company's business and to facilitate informed investment decisions. All disclosures made in financial reports and public documents filed with the Securities and Exchange Commission and other public communications must be full, fair, accurate, timely and understandable.

You must not selectively disclose (whether in one-on-one, small or other discussions or meetings) any material non-public information regarding Tekelec, its securities, business operations, plans, financial condition, results, business opportunity or any development or plan (except when expressly authorized to do so under applicable Company policies or pursuant to a nondisclosure agreement that has been reviewed and approved under such policies). You should be particularly careful not to disclose such information if you make presentations or proposals to customers, business providers, investors or any other third party.

To ensure accurate reporting, Tekelec employs both internal and outside auditors. You must cooperate with and provide any auditor or investigator accurate, timely and truthful information. You must not improperly influence, manipulate or mislead any auditor or investigator.<sup>1</sup>

**CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

33. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with, and conspired with, one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted and/or assisted each other in breach of their respective duties.

---

<sup>1</sup> The Code referred to is that which was submitted as an exhibit to the Company's 2009 10-K. On November 11, 2010, Tekelec amended its Code.



1           34. During all times relevant hereto, the Individual Defendants  
2 collectively and individually initiated a course of conduct that was designed to and  
3 did:

4  
5           (a) Conceal the fact that the Company was improperly  
6 misrepresenting its financial results in order to allow defendants to  
7 artificially inflate the price of the Company's shares;

8           (b) Maintain the Individual Defendants' executive and directorial  
9 positions at Tekelec and the profits, power and prestige that the  
10 Individual Defendants enjoyed as a result of these positions; and

11           (c) Deceive the investing public, including shareholders of  
12 Tekelec, regarding the Individual Defendants' management of  
13 Tekelec's operations, the Company's financial health and stability,  
14 and future business prospects, specifically related to the Company's  
15 financials that had been misrepresented by defendants throughout the  
16 Relevant Period.

17           35. In furtherance of this plan, conspiracy and course of conduct, the  
18 Individual Defendants collectively and individually took the actions set forth  
19 herein.

20           36. The Individual Defendants engaged in a conspiracy, common  
21 enterprise and/or common course of conduct commencing by at least February 11,  
22 2010, and continuing thereafter. During this time, the Individual Defendants  
23 caused the Company to conceal the true facts that Tekelec was misrepresenting its  
24 financial results and violating applicable laws. In addition, defendants also made  
25 other specific, false statements about Tekelec's financial performance and future  
26 business prospects, as alleged herein.

27           37. The purpose and effect of the Individual Defendants' conspiracy,  
28 common enterprise, and/or common course of conduct was, among other things:



1 (a) to disguise the Individual Defendants' breaches of fiduciary duty, abuse of  
2 control, gross mismanagement, waste of corporate assets and unjust enrichment;  
3 (b) to conceal adverse information concerning the Company's operations,  
4 financial condition and future business prospects; and (c) to artificially inflate the  
5 price of Tekelec's common stock so they could protect and enhance their  
6 executive and directorial positions and the substantial compensation and prestige  
7 they obtained as a result thereof.

8 38. The Individual Defendants accomplished their conspiracy, common  
9 enterprise and/or common course of conduct by causing the Company to  
10 purposefully, recklessly or negligently misrepresent its financial results. Because  
11 the actions described herein occurred under the authority of the Board, each of the  
12 Individual Defendants was a direct, necessary and substantial participant in the  
13 conspiracy, common enterprise and/or common course of conduct complained of  
14 herein.  
15

16 39. Each of the Individual Defendants aided and abetted and rendered  
17 substantial assistance in the wrongs complained of herein. In taking such actions  
18 to substantially assist the commission of the wrongdoing complained of herein,  
19 each Individual Defendant acted with knowledge of the primary wrongdoing,  
20 substantially assisted the accomplishment of that wrongdoing, and was aware of  
21 his or her overall contribution to and furtherance of the wrongdoing.  
22

### 23 COMPANY BACKGROUND

24 40. Tekelec is a global provider of communication network software and  
25 systems that enable users to deliver an array of communications services including  
26 voice, text messaging, and mobile data services. The Company is headquartered in  
27 Morrisville, North Carolina and employs approximately 1,100 people worldwide.  
28

1        41. Tekelec's software is designed to enable its customers,  
 2 predominantly mobile (or wireless) and fixed (or wireline) service providers, to  
 3 optimize network efficiency and transition traditional networks to Internet  
 4 Protocol ("IP") - based mobile networks. There are more than 1,800 Tekelec  
 5 systems and software applications deployed in networks located in 107 countries  
 6 worldwide.

7        42. Tekelec's Form 10-K for the year ended December 31, 2009 (the  
 8 "2009 Form 10-K") explains:

9  
 10        Wireless and wireline networks make use of a signaling network that  
 11 is logically and often physically separated from the media or  
 12 transport network. The signaling network improves overall network  
 13 performance by reducing call setup times, increasing the efficiency of  
 14 the network, providing for interoperability between two  
 15 independently owned networks, and providing access to enhanced  
 16 services. Historically, the technology underpinning wireless and  
 17 wireline networks has been the globally accepted signaling protocol  
 18 known as Signaling System #7, or SS7.

19        *Expanding Globally.* We sell our products internationally through our  
 20 direct sales force, sales agents, partnerships, and distributor  
 21 relationships. *We also sell directly from our wholly owned*  
 22 *subsidiaries in Argentina, Australia, Belgium, Brazil, Canada,*  
 23 *Colombia, the Czech Republic, France, Germany, India, Italy,*  
 24 *Malaysia, Mexico, the Netherlands, Singapore, South Africa,*  
 25 *Spain, Taiwan and the United Kingdom, and from our sales offices*  
 26 *in China, Dubai, and the Russian Federation. Total international*  
 27 *revenues for 2009, 2008, and 2007 were \$285.8 million, \$296.8*  
 28 *million, and \$263.7 million, respectively, representing 61 016,*  
*64016, and 61016, respectively, of our total revenues.*

India is in the process of mandating number portability and we were  
 successful in winning eight out of the ten service providers we were  
 invited to bid on. The Indian government has delayed the mandatory  
 implementation date to early to mid 2010 and, accordingly, our 2009

1 number portability revenues do not include any significant revenues  
2 from these deals. *We currently expect that these orders will convert*  
3 *to revenue during 2010 and 2011. Because number portability*  
4 *opportunities are increasingly becoming integrated with our larger*  
5 *Eagle signaling opportunities, we anticipate that we will combine*  
6 *the reporting of our Eagle and NP product line revenues in 2010.*  
7 [Emphasis added.]

8 43. The launch of Tekelec's Eagle XG platform was very important to  
9 the Company. Tekelec designed the platform to generate growth in sales in the  
10 Company's North American and emerging markets. In a press release announcing  
11 the launch of Eagle XG, the Company stated:

12 **Morrisville, NC (Thursday, February 12, 2009)** Tekelec  
13 (NASDAQ: TKLC), the network signaling, mobile messaging and  
14 performance management company, today announced the EAGLE®  
15 XG, a new signaling and session control platform that enables  
16 operators to deploy hybrid, next generation networks (NGNs) while  
17 leveraging existing technology investments. Tekelec's approach  
18 lowers capex and opex while delivering new services and improving  
19 network performance.

20 Subscriber growth, the increase in wireless-enabled devices, and  
21 consumer demand for third-party applications on phones is driving  
22 operators to support millions of new Internet protocol (IP)-enabled  
23 devices. This increase requires larger network databases to manage  
24 traffic and routing information. Service providers must also maintain  
25 interoperability between new session initiation protocol (SIP) and  
26 existing Signaling System 7 (SS7) protocols on their hybrid networks  
27 in order to provide uninterrupted service and maximize the value of  
28 existing network assets.

The EAGLE XG open hardware platform and applications give  
service providers a path forward from Tekelec's market share-leading  
signaling platform, the EAGLE 5, with a cost-effective, scalable  
migration to IP multimedia subsystem (IMS) or Long Term  
Evolution (LTE) networks.

1 “Service providers must meet customers’ needs for new services  
2 while watching the bottom line, especially in today’s economy,” said  
3 Ron de Lange, executive vice president at Tekelec. “The EAGLE XG  
4 is a natural evolution of Tekelec’s signaling technology that lets  
5 operators manage hybrid networks and expand next generation  
6 networks while consolidating and simplifying network architecture.”

7 The platform supports a converged database that enables multiple  
8 core network applications, reducing capex and opex by consolidating  
9 subscriber and network routing data and eliminating the need to  
10 manage, maintain and update databases for each application.

### 11 DEFENDANTS’ FALSE AND MISLEADING STATEMENTS

12 44. The Relevant Period begins on February 11, 2010, when Tekelec  
13 issued a press release announcing its earnings for the three months and year ended  
14 December 31, 2009. The press release stated:

15 Tekelec Announces Strong Q4 and Full Year 2009 Operating Results

#### 16 **2009 Fourth Quarter Results from Continuing Operations**

17 Revenue from continuing operations for the fourth quarter of 2009  
18 was \$123.5 million, up 3% compared to \$119.9 million for the fourth  
19 quarter of 2008. *The Company had orders of \$162.4 million for the*  
20 *quarter, up 1% from the fourth quarter of 2008, and the second*  
21 *consecutive quarter of year-over-year growth. As of December 31,*  
22 *2009, backlog was \$373.6 million compared to \$336.7 million as of*  
23 *September 30, 2009 and \$412.1 million as of December 31, 2008.*

24 45. CEO Plastina commented on the results, stating:

25 We are very pleased with our operating results, and in particular, with  
26 the strength of our orders for the fourth quarter. *Our orders for the*  
27 *quarter were up 1 % compared to 2008. For the last six months of*  
28 *the year, orders were up 4% over the same period in 2008 and we*  
*generated a book-to-bill ratio of approximately 1.10 to 1 during the*  
*second half of 2009.* Our strong financial performance during the  
fourth quarter and full year of 2009, including year-over-year  
revenue growth for the quarter and year, along with record earnings

1 per share of \$1.04 for the full year, reflect our disciplined approach to  
2 bringing value to our customers and shareholders despite the difficult  
3 competitive and financial climate.

#### 4 **2010 Full Year Guidance**

5 While there remains uncertainty in current economic conditions,  
6 ***based on improved visibility compared to last year***, we are providing  
7 full year guidance for 2010. We believe that full year revenues will  
8 range between \$470 and \$480 million and gross margins will be in  
9 the mid to high sixty percent range. Finally, we believe that our non-  
10 GAAP EPS range will be between \$1.10 and \$1.15 per diluted share  
11 and we expect the range for GAAP EPS will be between \$0.90 and  
12 \$0.95 cents per diluted share. In addition, we expect our book to bill  
ratio to be approximately one to one for the year. [Emphasis in bold  
and italics added.]

13 46. That same day, Defendants held a conference call with securities  
14 analysts that included the following prepared remarks by the Individual  
15 Defendants:

#### 16 Defendant Plastina:

17  
18 We booked four new EAGLE XG orders during the fourth quarter  
19 including two expansion orders from existing EAGLE XG  
20 customers. Both expansions involved a new SIP signaling router  
21 application providing BICC to SIP interworking. BICC is one of the  
22 many protocols used by most of the world mobile service providers.  
23 In one of these wins, we simplified session management between  
24 the mobile network and the long distance network. Our application  
25 cost effectively completes the session without disrupting the billing.  
26 We won this deal against an expensive competing solution that  
27 involved the costly proposition of upgrading a mobile switching  
28 server, adding multiple media gateways and modifying the back  
office systems for billing. Including the four EAGLE XG wins  
during the fourth quarter, we have now booked a total of 13 EAGLE  
XG orders with 11 customers. Nine of these customers are tier one

1 service providers. We finished the year with over \$30 million of  
2 EAGLE XG orders in our backlog.

3 *Our continued success in the market is evidenced by our new*  
4 *customer wins. We added a total of five new customers during the*  
5 *quarter. In total, we won 19 new customers last year and have won*  
6 *59 new customers over the last three years. We now have products*  
7 *installed in 107 countries around the world. We are especially*  
8 *pleased with our growth in the emerging markets such as India*  
9 *and Brazil and the innovative insights that we gain from emerging*  
10 *market service providers. In these markets, creative service*  
11 *providers are in many instances surpassing developed world*  
12 *market players in bringing innovations to market.* For example it is  
13 likely that a mobile device will facilitate a consumers first web  
14 surfing or banking experience in these markets. This scenario  
15 stresses the importance of having a global perspective and strong  
16 installed base in order to remain at the forefront of innovation. The  
17 fact that we do business with most of the world's major service  
18 providers, across 107 countries is a distinct competitive advantage  
19 for Tekelec.

20 Defendant Everett:

21 As shown on slide 17, *we had strong order entry in the fourth*  
22 *quarter generating \$162.4 million in new orders which exceeded*  
23 *the high end of our previous guidance. We benefited from higher*  
24 *than anticipated demand, particularly in North America. Some of*  
25 *these fourth quarter orders generated book shift business in the*  
26 *quarter which also help to succeed our revenue target and increase*  
27 *our quarterly gross margins. This strong order entry generated a*  
28 *book to bill ratio of 1.3 for the quarter which helped increase our*  
*backlog. In the second half of 2009, we generated orders of \$257.2*  
*million, up 4% from the second half of 2008. For the full year*  
*2009, orders were \$429.8 million, down 5% compared to the full*  
*year of 2008. This performance was in an environment where year*  
*over year global telecom spending, excluding China, was down*  
*approximately 12% based on Credit Suisse's most recent industry*  
*CapEx estimates. Further, as we previously indicated, our fourth*  
*quarter orders include four EAGLE XG wins. These additional*



1 *wins provide further market validation for the value provided by*  
2 *Tekelec suite of next generation signaling applications.* [Emphasis  
3 added.]

4 47. During the conference call, analysts questioned Defendants Plastina  
5 and Everett about the Company's plans for international markets generally, and  
6 the Indian market in particular:

7 Amir Rozwadowski - Barclays Capital - Analyst:

8  
9 In looking at your guidance for next year, is there a built-in  
10 expectation that you see similar patterns or increased capacity  
11 purchases or books shipped? I'm just trying to understand how  
12 you're sort of looking at it in terms of business mix coming from  
13 bookings versus books shipped in 2010.

14 Defendant Plastina:

15 The mix we've left largely the same as it was in 2009. *The 2010, 470*  
16 *to 480 target reflects our current conversations and how our*  
17 *current customers think they're going to spend their CapEx budget.*  
18 *That will obviously be adjusted depending on base demand, but*  
19 *right now there is enough visibility for us to at least give you that*  
20 *annual number. Last year we didn't have that visibility. So I think*  
21 *that's obviously a positive sign versus last year. Right now that 470,*  
22 *480 literally reflects the conversations that we've had with all our*  
23 *major customers.*

24 Defendant Everett:

25 Amir, if you are asking is there a fundamental change in assumption  
26 relative to that? I don't think we have a fundamentally different view.  
27 It represents a consistent component of our business. Some quarters  
28 it's higher than others, it was particularly high in Q4, but we are not  
assuming, for example, that we have to make some fundamental  
change in our books shipped business to arrive at our numbers for  
next year.



1 Amir Rozwadowski - Barclays Capital - Analyst:

2  
3 Okay. That's very helpful. Lastly, if I may, Frank. You talk about  
4 improving visibility. Certainly, last quarter when we spoke, there was  
5 some concerns about particular regions not seeing any signs of  
6 recovery just yet. Europe was an area that you had mentioned. I was  
7 wondering if you could talk a bit of where we stand today. Is some of  
8 the more challenged regions, have they improved as we stand today,  
9 or how should we think about things from that perspective?

10 Defendant Plastina:

11 *I think the emerging markets remain strong. In particular our*  
12 *position in India and Brazil remains strong.* Western Europe  
13 remains weak. That's still an area where there is very little CapEx,  
14 anticipatory CapEx spending is probably the best way to put it. It's  
15 really day-to-day maintenance. We saw some of our book ship in  
16 2009 to western Europe go down versus 2008. That was more than  
17 compensated by the strength in North America. I think it really  
18 comes down to not really necessarily a regional play, but where a  
19 particular service provider is in their evolution path. What is their  
20 smart phone penetration? What kind of services are they doing on  
21 their network? How much penetration do they have as they reach a  
22 saturation point? That's how we look at it as opposed to any kind of  
23 particular regional tendencies. The emerging market players are still  
24 growing because they are still adding a lot of subscribers at the very  
25 different dynamic than western Europe, for example.

26 George Notter - Jefferies - Analyst:

27 Wanted to ask about India. Obviously there's been some delay in the  
28 timing of the 3G license awards there. You mentioned all of the  
success you're having in terms of LMP customer wins. I guess I'm  
just wondering if you are see some push outs in the timing there? I  
know you're involved in the signaling piece as well. What are your  
thoughts there? Thanks.

1       Defendant Plastina:

2       *We are seeing live date push out George, but that doesn't really*  
3       *impact our revenue because the revenue is based on customer*  
4       *acceptances, which is a contractual term. So we still expect to book*  
5       *most of the -- vast majority of the revenues this year and next. So*  
6       *12 to 24-month time frame is still what we're looking at to book all*  
7       *of the orders that we have in the backlog now for India number*  
8       *portability.*

9       Larry Harris - CL King - Analyst:

10       I want to talk more about India. I think the number portability  
11       opportunity previously been sized as around \$50 million or \$75  
12       million perhaps over several years. Do you think that that  
13       opportunity, now that you've won eight out of the ten bids, has  
14       increased and also I get the sense that there's -- you're probably less  
15       concerned about margins in India than perhaps you were previously.  
16       Is that a correct assumption?

17       Defendant Plastina:

18       That's a correct assumption. I think if you look at our target for the  
19       year in 2010, we haven't moved away from historical ranges. We're  
20       comfortable with that. Obviously 2010 includes some revenue from  
21       India number portability. I think the important way to look at India  
22       number portability is it's built up a beach head for us in all of those  
23       customers. A few of those customers did not have a separate  
24       signaling layer before they had to make this number portability  
25       decision. We actually went in there and showed them the business  
26       case and having a separate layer and the savings coming from it.  
27       They decided to move to our solution for number portability, but at  
28       the same time start driving a lot of the core signaling traffic through  
      our equipment as well. They also wanted to make sure that all of this  
      with evolvable to 3G. They are planning ahead in the sense they  
      don't just want to do number portability. They don't just want to  
      handle today's signaling traffic. They wanted to make sure there was  
      a core and a set of products that could evolve to that next generation.  
      Certainly, our portfolio met those needs.

1 Larry Harris - CL King - Analyst:

2  
3 Do you think there are opportunities because they are going to be  
4 installing this equipment and you've won more carriers, is that larger  
5 than what you might of seen three or six months ago?

6 Defendant Plastina:

7 I think this is just going to evolve towards a sizeable signaling  
8 business much like we have in other countries where we've been  
9 there a long time and that's the way to look at it. *We think the India*  
10 *business, now that we've got that very solid starting point, is going*  
11 *to continue to morph and they're going to have extension business*  
12 *and all of the other things our US customers have over time. I think*  
13 *it's probably this year or next that India will clearly be our second*  
14 *largest single country market after the US.*

15 Defendant Everett:

16 Larry, without regard to even the advent of 3G, just from a subscriber  
17 basis alone, there is roughly 525 million mobile subscribers in India  
18 today. That number's projected to go up to over 800 million in the  
19 next several years. So just through subscriber growth alone there  
20 should be a significant amount of additional signaling traffic.

21 Defendant Plastina:

22 Right now, all we're doing is signaling in most of these customers.  
23 We do have a couple of customers for monitoring and our other  
24 products, but obviously we have the up sell opportunity to go deeper  
25 into each one of these accounts that we've won with the rest of our  
26 portfolio.

27 Larry Harris - CL King - Analyst:

28 Sounds positive. Thank you. [Emphasis added.]

1        48. Analysts' reactions to the Company's February 11 announcements  
 2 were positive. A February 12, 2010 Jeffrey's & Company, report noted the  
 3 following:

4        **A GREAT Q4...** Tekelec printed stronger-than-expected Q4  
 5 numbers. Revenues of \$123.5 million beat our \$108.2 million  
 6 expectation (Street = \$111.3 million). On the bottom-line, the  
 7 company reported non-GAAP EPS of \$0.25 versus our \$0.16  
 8 expectation (our numbers include FAS 123R stock compensation  
 9 expenses). The organization's profitability benefited both from top-  
 10 line upside and stronger-than-expected gross margins (68.7% versus  
 11 our 65.0% target). As with the prior quarter, the company  
 12 experienced notably strong book-and-ship business within North  
 13 America as carriers sought to keep up with growth in signaling  
 14 traffic. We note that the book-and-ship signaling extensions business  
 15 tends to be higher margin. *Elsewhere, the company's emerging*  
 16 *market business remained consistent with Q3 (\$42.0 million versus*  
 17 *\$41.4 million). Emerging market bookings, however, were very*  
 18 *strong -- \$71.5 million. The mix shift continues to shift toward*  
 19 *international markets.* Tekelec had two 10% customers during the  
 20 quarter: T-Mobile (15%) and Verizon (15%).

21        49. In response to the Company's announcement and Defendants'  
 22 positive statements, on February 11, 2010, the price of Tekelec stock rose \$2.01  
 23 per share, or approximately 13.5%, on heavy volume to close at \$16.86 per share.

24        50. On February 16, 2010, Tekelec issued a press release announcing that  
 25 Bharat Sanchar Nigam Ltd., the world's seventh largest telecommunications  
 26 company providing a comprehensive range of telecom services in India, selected  
 27 the Company to provide mobile number portability and session initiation protocol  
 28 ("SIP") routing. The press release also noted that Tekelec had 97 number  
 portability customers -- including eight in India -- in 33 countries at the end of  
 2009, and that Tekelec had won eight out of the ten number portability bids in  
 India it had entered.

1        51. On February 25, 2010, Tekelec filed its 2009 Form 10-K with the  
2 SEC, which included the following representations about the Company's  
3 disclosure and internal controls and CEO Plastina's and CFO Everett's  
4 certification thereon:

5        Based on our management's evaluation (with the participation of  
6 our Chief Executive Officer and Chief Financial Officer), as of the  
7 end of the period covered by this Annual Report, our Chief  
8 Executive Officer and Chief Financial Officer have concluded that  
9 our disclosure controls and procedures (as defined in Rules 13a-  
10 15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as  
11 amended (the "Exchange Act")) are effective to ensure that  
12 information required to be disclosed by us in reports that we file or  
13 submit under the Exchange Act is recorded, processed, summarized  
14 and reported within the time periods specified in Securities and  
15 Exchange Commission rules and forms and is accumulated and  
16 communicated to our management, including our Chief Executive  
17 Officer and Chief Financial Officer, as appropriate to allow timely  
18 decisions regarding required disclosure.

16        Our management, including our Chief Executive Officer and our  
17 Chief Financial

18 Officer, does not expect that our disclosure controls and procedures  
19 or our internal control over financial reporting are or will be capable  
20 of preventing or detecting all errors and all fraud. Any control  
21 system, no matter how well designed and operated, can provide only  
22 reasonable, not absolute, assurance that the control system's  
23 objectives will be met. The design of a control system must reflect  
24 the fact that there are resource constraints and the benefits of  
25 controls must be considered relative to their costs. Further, because  
26 of the inherent limitations in all control systems, no evaluation of  
27 controls can provide absolute assurance that misstatements due to  
28 error or fraud will not occur or that all control issues and instances  
of fraud, if any, within the company have been detected. These  
inherent limitations include the realities that judgments in decision-  
making can be faulty and that breakdowns can occur because of  
simple error or mistake. Controls can also be circumvented by the  
individual acts of some persons, by collusion of two or more people,

1 or by management override of the controls. The design of any  
2 system of controls is based in part on certain assumptions about the  
3 likelihood of future events, and there can be no assurance that any  
4 design will succeed in achieving its stated goals under all potential  
5 future conditions.

6 I, [Defendant Plastina and Everett], certify that:

7 1. I have reviewed this Annual Report on Form 10-K of Tekelec;

8 2. Based on my knowledge, this report does not contain any untrue  
9 statement of  
10 a material fact or omit to state a material fact necessary to make the  
11 statements made, in light of the circumstances under which such  
12 statements were made, not misleading with respect to the period  
13 covered by this report;

14 3. Based on my knowledge, the financial statements, and other  
15 financial information included in this report, fairly present in all  
16 material respects the financial condition, results of operations and  
17 cash flows of the registrant as of, and for, the periods presented in  
18 this report;

19 4. The registrant's other certifying officer(s) and I are responsible  
20 for establishing and maintaining disclosure controls and procedures  
21 (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and  
22 internal control over financial reporting (as defined in Exchange Act  
23 Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

24 a) Designed such disclosure controls and procedures, or  
25 caused such disclosure controls and procedures to be designed  
26 under our supervision, to ensure that material information  
27 relating to the registrant, including its consolidated  
28 subsidiaries, is made known to us by others within those  
entities, particularly during the period in which this report is  
being prepared;

b) Designed such internal control over financial reporting, or  
caused such internal control over financial reporting to be



1 designed under our supervision, to provide reasonable  
2 assurance regarding the reliability of financial reporting and  
3 the preparation of financial statements for external purposes  
in accordance with generally accepted accounting principles;

4 c) Evaluated the effectiveness of the registrant's disclosure  
5 controls and procedures and presented in this report our  
6 conclusions about the effectiveness of the disclosure controls  
7 and procedures, as of the end of the period covered by this  
report based on such evaluation; and

8 d) Disclosed in this report any change in the registrant's  
9 internal control over financial reporting that occurred during  
10 the registrant's most recent fiscal quarter (the registrant's  
11 fourth fiscal quarter in the case of an Annual Report) that has  
12 materially affected, or is reasonably likely to materially  
13 affect, the registrant's internal control over financial  
reporting; and

14 5. The registrant's other certifying officer(s) and I have disclosed,  
15 based on our most recent evaluation of internal control over  
16 financial reporting, to the registrant's auditors and the audit  
17 committee of the registrant's board of directors (or persons  
performing the equivalent functions):

18 a) All significant deficiencies and material weaknesses in the  
19 design or operation of internal control over financial reporting  
20 which are reasonably likely to adversely affect the registrant's  
21 ability to record, process, summarize and report financial  
22 information; and

23 b) Any fraud, whether or not material, that involves management  
24 or other employees who have a significant role in the  
25 registrant's internal control over financial reporting.

26 52. Defendants repeated these representations regarding Tekelec's  
27 disclosure controls, and Defendants' certifications thereon, in the Form 10-Q for  
28



1 the quarter ended June 30, 2010 that Tekelec filed with the SEC during the  
2 Relevant Period.

3  
4 **DEFENDANTS' STATEMENTS WERE FALSE AND MISLEADING**

5 53. As set forth herein, defendants' statements were materially false and  
6 misleading because:

7  
8 a) Tekelec was experiencing known but undisclosed difficulties in  
9 fulfilling orders in its emerging markets in general, and India in particular,  
10 because of security and regulatory issues;

11  
12 b) Tekelec's customers in the Company's emerging markets were  
13 experiencing credit issues that caused them to delay purchases of the  
14 Company's products and services; and

15  
16 c) Tekelec was experiencing a sharp decline in new orders that were  
17 reasonably likely to have a material adverse effect on the Company's  
18 backlog and operating results.

19  
20  
21 54. As a result,, Defendants' representations concerning their "visibility"  
22 into the Company's earnings, that the Company's emerging markets "remain  
23 strong," that Tekelec's "position in India and Brazil remains strong" and that  
24 delays in Indian license awards "doesn't really impact our revenue because the  
25 revenue is based on customer acceptances, which is contractual," were materially  
26 false and misleading. Similarly, for the same reasons, Defendants' statements  
27  
28

1 about the Company's prospects and growth and representations concerning the  
2 Company's disclosure controls were also materially false and misleading.

3 **THE TRUTH BEGINS TO EMERGE**

4  
5 55. On May 6, 2010, Tekelec issued two press releases: (1) an  
6 announcement of the Company's agreements to acquire two networking  
7 companies, Camiant and Blueslice Networks; and (2) an announcement of the  
8 Company's earnings for the first quarter ended March 31, 2010:

9 Revenue for the first quarter of 2010 was \$116.0 million, down 1%  
10 compared to \$116.7 million for the first quarter of 2009. The  
11 Company had orders of \$56.7 million for the quarter, down 17%  
12 from the first quarter of 2009. *Orders in the first quarter of 2010*  
13 *were adversely impacted in part by new regulations in India,*  
14 *which require equipment suppliers receive a security clearance*  
15 *from the Indian government prior to receiving purchase orders*  
16 *from telecommunications carriers. These new regulations resulted*  
17 *in the delay of approximately \$10 million of orders. We expect to*  
18 *receive these orders during the second quarter of 2010.* As of  
19 March 31, 2010, backlog was \$308.4 million compared to \$373.6  
20 million as of December 31, 2009 and \$359.3 million as of March  
21 31, 2009.

22  
23 **Full Year 2010 Guidance**

24 For the full year, we expect combined revenues will range between  
25 \$465 million and \$480 million. This estimate reflects the  
26 elimination of up to an estimated \$10 million of deferred revenues  
27 from the acquired companies as a result of purchase accounting.  
28 Gross margins are estimated to be in the mid to high sixty percent  
range. We expect non-GAAP EPS, excluding the impact of the  
above mentioned purchase accounting adjustments and certain one-  
time acquisition related items, to range between \$0.95 and \$1.10 per

1 share. Including the estimated \$0.08 to \$0.12 cents per share impact  
2 of these items, we expect our non-GAAP range to be between \$0.85  
3 and \$1.00 per share. Finally, we expect our book to bill ratio to be  
approximately 1 to 1.

4 56. That same day, Defendants held a conference call with analysts that  
5 included the following statements by Defendants Plastina and Rush:

6 Defendant Plastina:

7  
8 Turning to the results for the first quarter, we generated orders of  
9 \$56.7 million, revenue of \$116 million, gross margins of 67%,  
10 operating margins of 24%, and diluted EPS of \$0.26 per share. *In*  
11 *addition to typical first quarter seasonality, orders in the first*  
12 *quarter were adversely impacted in part by new regulations in*  
13 *India. These new rules require equipment suppliers to receive a*  
14 *security clearance from the Indian government prior to receiving*  
15 *purchase orders from telecommunications carriers. These new*  
16 *regulations resulted in the delay of approximately \$10 million of*  
17 *orders. We expect to receive these orders during the current*  
18 *quarter.* Greg will provide more detail of our results later in the call.

19 Defendant Rush:

20 I would like to point out that there are an unusually large number of  
21 acceptances, particularly those associated with number portability in  
22 India, which could result in significant variability in our revenues  
23 between the second and third quarter. Based on our current  
24 expectations, we believe our second quarter revenues will be our  
25 lowest of the year and lower than Q2 2009. We expect our combined  
26 book to bill ratio will be approximately one to one for the year.  
27 [Emphasis added.]

28 57. In response to questions by analysts, Defendant Plastina stated:

Brian Modoff - Deutsche Bank - Analyst:

1 Okay and then turning to your business, the \$6 million in orders,  
2 even if you add the \$10 million in, was still weak. Is this really more  
3 of a softening demand transfer to EAGLE 5? In other words, are we  
4 starting to see that product line starting to show it's age a little bit  
5 before the EAGLE XG pops up or what is your view on that?

6 Defendant Plastina:

7 It is a combination of things. *It is really a slow [down] in the*  
8 *emerging markets is what we have seen.* The aggressive build up  
9 and extension and expansion plans have just been slowed down. We  
10 saw a pretty solid US business, including EAGLE 5. Year over year  
11 our booked ship business was up in the quarter. So it seems to be a  
12 bit of a regional thing in terms of the EAGLE 5 business. Going  
13 forward, the plan is always to start moving all of the expansion  
14 capabilities, including SIGTRAN and all the other core processing  
15 functionality onto EAGLE XG.

16 Amir Rozwadowski - Barclays Capital - Analyst:

17 Thank you very much and good morning, Frank, Greg and Mike.  
18 Frank, I just wanted to turn to your guidance a bit here. If we take a  
19 look at sort of the organic guidance for the business it seems to have  
20 come down a little bit from your prior expectations. I was wondering  
21 what the major puts and takes were there? Is it sort of the timing  
22 around some of the India related issues you had mentioned or how  
23 we should think about that?

24 Defendant Plastina:

25 A couple of things. Really the cautiousness in the emerging markets,  
26 as I mentioned in the earlier question. *What we are seeing is, is a*  
27 *more cautious spending tone in terms of the expansion business in*  
28 *some of the bigger emerging markets and that includes India.*  
*India, then has the security issues that really delayed things by*  
*about 90 days in the first quarter. There is a double whammy in*  
*India.* Overall, we are still seeing some pretty good traction and  
expect growth in our non - EAGLE 5 business. So this is really an

1 emerging markets EAGLE 5 related flatness. Is the way I would  
2 categorize it. The order outlook has come down. The revenue has  
3 come down a bit. Obviously, now we've got the opportunity to up  
4 sell the new products and we expect some contribution from the new  
5 products this year.

6 Michael Genovese - Soleil Securities - Analyst:

7 Okay. And then, last quarter, you had a lot of wins that you talked  
8 about in mobile number portability deals in India. What is the  
9 outlook now for that? For actually M&P to actually be implemented  
10 and for some -- for orders in that area to come back? What is your  
11 current thinking?

12 Defendant Plastina:

13 The implementation is going on as we speak. We are ready to  
14 actually turn on several of the networks. And as you heard, in Greg's  
15 prepared remarks, we have some acceptance based deals specifically  
16 related to the number portability work in India that we are not quite  
17 sure if it is going to be June or July. That is why we are going to have  
18 variability between Q2 and Q3. But we are pretty confident they are  
19 going to happen this year. [Emphasis added.]

20 58. On May 6, 2010, in response to the Company's adverse statements  
21 regarding the effects of emerging markets in general, and India in particular, on  
22 the Company's operating performance, Tekelec's stock price dropped  
23 approximately 20% on very heavy volume to close at \$14.10 per share, as a  
24 portion of the artificial inflation came out of the stock price. However, the May 6,  
25 2010 disclosures did not reveal the true scope of the problems that the Company  
26 was facing. It was not until August 5, 2010, that Defendants fully disclosed the  
27 falsity of their prior misrepresentations.  
28

1           59. On August 5, 2010, Tekelec issued a press release announcing its  
2 operating results for the quarter ended June 30, 2010:

3           Revenue for the second quarter of 2010 was \$109.5 million, down  
4 4% compared to \$114.2 million for the second quarter of 2009. *The*  
5 *Company's orders were \$72.1 million for the quarter, down 31 %*  
6 *from the second quarter of 2009. Order input was down primarily*  
7 *due to a reduction in SS7 and SIGTRAN orders in emerging*  
8 *markets, including ongoing delays caused by security- related*  
9 *regulations imposed by the Indian government. As of June 30,*  
10 *2010, backlog was \$271.6 million compared to \$308.4 million as of*  
11 *March 31, 2010 and \$353.3 million as of June 30, 2009.* Gross  
12 margins for the second quarter of 2010 were 63%, compared to 67%  
in the second quarter of 2009. Non-GAAP gross margins for the  
second quarter of 2010 were 67%, compared to 68% for the second  
quarter of 2009. [Emphasis added.]

13  
14           60. That same day, Defendants held a conference call with securities  
15 analysts for investors, which included the following statements by Defendant  
16 Plastina:

17           However, order input fell short of expectations. We generated \$72  
18 million in orders for the second quarter. *Our year-to-date orders of*  
19 *\$129 million are down 25% compared to the same period last year.*  
20 As discussed on the previous call, we continue to see lower  
SIGTRAN SS7 solution orders primarily from emerging markets.

21  
22           In addition, *order input in India continues to be impacted by the*  
23 *new security regulations imposed by the Indian government, as well*  
24 *as delays in the expected deployment of 3G networks. These delays*  
25 *impacted the order input that we had expected from our base of*  
26 *customers in India during the first half.* We are reviewing the most  
27 recent security-related regulations imposed by the Indian  
28 government, and although the impact of such regulations on our  
operations and order flows is uncertain, we expect improved order  
flow in the second half of 2010. Also the pipeline and quote activity  
for business in India is very healthy across many parts of our

1 portfolio. Several of our customers in India have already consumed a  
2 signaling capacity purchased last year as part of their planned growth,  
3 including number portability.

4 Despite the ongoing delays in order input, our work on the ground in  
5 India has continued. We recognized approximately \$15 million of  
6 EAGLE and number portability-related revenue in India during the  
7 quarter. These revenues are reflected in our Q2 gross margin  
8 performance of 67%.

9 ***Looking to other emerging market regions, the Middle East and***  
10 ***Africa continue to be challenged with credit issues,*** forcing many  
11 service providers to delay purchases and run their networks at near  
12 capacity. As an example, we received approximately \$4 million in  
13 orders from customers in this region during the quarter that we will  
14 not book until we have a clear view that payment will be secured.  
15 [Emphasis added.]

16 61. On the same conference call with analysts, Defendant Plastina also  
17 represented the following:

18 Larry Harris - CL King & Associates - Analyst:

19 Yes, thank you. A couple of questions. One with respect to India. I  
20 know the security situation there is still evolving but how long under  
21 your current accounting rules, say before we might see a rebound in  
22 revenues? In other words, if this were to be resolved in the next  
23 month or two, how long before we might see orders, then shipments,  
24 and could the revenues from the resolution of these issues occur in  
25 the fourth quarter, or might we be looking at the early next year?

26 Defendant Plastina:

27 Larry, this is really something that gets pushed out to 2011. Because  
28 right now if we get – ***we're already in August, if we get orders from***  
***India, it's very difficult for us to turn those into revenue before the***  
***end of this year depending on the size of the orders. Obviously some***  
***smaller orders would be easier than others. So if it's going to take***  
***us another month or so to sort this out with the Indian -- with the***



1 *customers and the Indian government or perhaps even longer,*  
 2 *we're looking at revenues being pushed out to 2011 for any orders*  
 3 *that come from India this year. That's reflected in our guidance*  
 4 *today. So that 7% adjustment that we've made bringing the range*  
 5 *down reflects the fact that we're not going to get those revenues in*  
 6 *this year.* [Emphasis added.]

62. In response to these statements, the price of Tekelec common stock  
 7 fell *more than 9%* on heavy trading volume, as the remaining artificial inflation  
 8 came out of the Company's stock price.

63. Analysts reacting to Tekelec's August 5, 2010 revelations expressed  
 10 their dissatisfaction:

11 **UGGHHH! SOFT BOOKINGS... AGAIN.** Forward-looking  
 12 metrics were disappointing for the second straight quarter. Aggregate  
 13 orders totaled \$72.1 million, up 27% Q/Q from \$56.7 million but  
 14 down 31% from \$104.7 million in the year-ago quarter. Compared  
 15 with Q1, backlog fell to \$271.6 million (down 12% Q/Q) and book-  
 16 to-bill improved to 0.66x (vs. 0.49x in Q1). The bookings softness  
 17 comes from: 1) the new security regulations in India associated with  
 18 network equipment; and 2) credit issues among Tekelec's customers  
 19 in the Middle East and Africa. - August, 6 2010 Jeffries & Company  
 20 Analyst Report

21 and

22 *For the present, we remain on the sidelines with our Hold rating on the*  
 23 *name [Tekelec].* - August 5, 2010 Deutsche Bank Analyst Report.

64. Additionally, at the same time Defendants were concealing the true  
 24 scope of Tekelec's financial health, they engaged in insider trading. Defendants'  
 25 false statements about the Company enabled Defendants Buckley, Everett, Floyd,  
 26 Plastina, Rush and Mills to sell approximately \$8.125 million in Tekelec stock  
 27 during the Relevant Period, as illustrated by the following chart:  
 28

**DEFENDANTS' STOCK TRANSACTIONS DURING THE RELEVANT PERIOD**

<b>Name</b>	<b>Tran. Date</b>	<b>Action</b>	<b>Price From</b>	<b>Price To</b>	<b>Mkt Value</b>	<b>Shares</b>
Ronald W. Buckly	2/16/2010	S	\$16.73	\$16.89	\$67,240	-4,000
Ronald W. Buckly	3/5/2010	OE	\$11.98	\$11.98	\$71,880	6,000
Ronald W. Buckly	3/5/2010	S	\$18.25	\$18.25	\$109,500	-6,000
Hubert de Pesquidoux	5/14/2010	OE	\$0.00	\$0.00	\$0	8,000
Hubert de Pesquidoux	5/15/2010	OE	\$0.00	\$0.00	\$0	3,333
William H. Everett	2/15/2010	OE	\$0.00	\$0.00	\$0	1,250
William H. Everett	2/16/2010	OE	\$16.42	\$16.42	\$410,500	25,000
William H. Everett	2/16/2010	D	\$16.88	\$16.88	\$12,609	-747
William H. Everett	2/16/2010	D	\$16.88	\$16.88	\$410,505	-24,319
William H. Everett	2/18/2010	AS	\$16.62	\$16.62	\$398,808	-24,000
William H. Everett	2/25/2010	OE	\$0.00	\$0.00	\$0	9,779
William H. Everett	2/25/2010	D	\$16.60	\$16.60	\$53,850	-3,244
William H. Everett	2/26/2010	D	\$16.52	\$16.52	\$40,210	-2,434
William H. Everett	2/26/2010	OE	\$0.00	\$0.00	\$0	7,500
William H. Everett	2/27/2010	OE	\$0.00	\$0.00	\$0	4,250

SHAREHOLDER DERIVATIVE COMPLAINT

Name	Tran. Date	Action	Price From	Price To	Mkt Value	Shares
William H. Everett	3/1/2010	D	\$17.26	\$17.26	\$37,610	-2,179
William H. Everett	3/1/2010	D	\$17.26	\$17.26	\$104,216	-6,038
William H. Everett	3/1/2010	OE	\$12.26	\$12.26	\$104,210	8,500
Mark A. Floyd	2/26/2010	OE	\$12.25	\$12.25	\$30,625	2,500
Franco Plastina	2/15/2010	OE	\$0.00	\$0.00	\$0	15,625
Franco Plastina	2/16/2010	D	\$16.88	\$16.88	\$88,181	-5,224
Franco Plastina	2/17/2010	AS	\$16.76	\$16.76	\$125,412	-7,500
Franco Plastina	2/17/2010	OE	\$11.96	\$11.96	\$1,196,000	100,000
Franco Plastina	2/17/2010	D	\$16.82	\$16.82	\$1,196,003	-71,106
Franco Plastina	2/17/2010	D	\$16.82	\$16.82	\$157,704	-9,376
Franco Plastina	2/22/2010	AS	\$16.79	\$16.79	\$327,688	-19,518
Franco Plastina	2/25/2010	D	\$16.60	\$16.60	\$89,839	-5,412
Franco Plastina	2/25/2010	OE	\$0.00	\$0.00	\$0	16,299
Franco Plastina	2/27/2010	OE	\$0.00	\$0.00	\$0	7,500
Franco Plastina	3/1/2010	D	\$17.26	\$17.26	\$54,956	-3,184
Franco Plastina	5/7/2010	D	\$14.59	\$14.59	\$139,364	-9,552
Franco	5/7/2010	OE	\$0.00	\$0.00	\$0	22,500

SHAREHOLDER DERIVATIVE COMPLAINT

Name	Tran. Date	Action	Price From	Price To	Mkt Value	Shares
Plastina						
Franco Plastina	5/11/2010	AS	\$14.90	\$14.92	\$111,756	-7,500
Franco Plastina	5/11/2010	OE	\$11.96	\$11.96	\$1,196,000	100,000
Franco Plastina	5/11/2010	D	\$15.11	\$15.11	\$1,196,002	-79,153
Franco Plastina	5/11/2010	D	\$15.11	\$15.11	\$133,708	-8,849
Gregory S. Rush	2/26/2010	OE	\$0.00	\$0.00	\$0	2,500
Gregory S. Rush	2/26/2010	D	\$16.52	\$16.52	\$15,975	-967
Gregory S. Rush	2/27/2010	OE	\$0.00	\$0.00	\$0	1,875
Gregory S. Rush	3/1/2010	OE	\$0.00	\$0.00	\$0	7,500
Gregory S. Rush	3/1/2010	D	\$17.26	\$17.26	\$53,696	-3,111
Gregory S. Rush	3/8/2010	AS	\$18.20	\$18.20	\$141,905	-7,797
Gregory S. Rush	5/19/2010	AS	\$14.81	\$14.81	\$50,008	-3,377
Carol G. Mills	5/16/2009	OE	\$0.00	\$0.00	\$0	8,000
<b>Total</b>					<b>\$8,125,960</b>	

**Transaction Code Key**

S Sell  
 Option  
 OE Exercised  
 AS Automatic

SHAREHOLDER DERIVATIVE COMPLAINT

Name	Tran. Date	Action	Price From	Price To	Mkt Value	Shares
D	Sell Disposed					
Note: D – Sale (or disposition) back to the issuer of the securities.						

### **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

65. Plaintiff brings this action derivatively in the right and for the benefit of Tekelec to redress injuries suffered, and to be suffered, by Tekelec as a direct result of the breaches of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Tekelec is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction in this Court that it would not otherwise have.

66. Plaintiff will adequately and fairly represent the interests of Tekelec and its shareholders in enforcing and prosecuting its rights.

67. Plaintiff is the owner of Tekelec common stock and was the owner of Tekelec common stock at all times relevant to the Individual Defendants' wrongful course of conduct alleged herein.

68. At the time that this action was commenced, the Tekelec Board consisted of the following directors: defendants Plastina, Floyd, Buckley, de Pesquidoux, Laube, Mills, Prabhu and Ressler.

1           69. As a result of the facts set forth herein, plaintiff has not made any  
2 demand on the Tekelec Board to institute this action against the Individual  
3 Defendants. Such demand would be a futile and useless act with respect to each  
4 and every one of the Individual Defendants because they are incapable of making  
5 an independent and disinterested decision to institute and vigorously prosecute  
6 this action for the following reasons:

7           (a) The Company has admitted in its 2009 14A Proxy Statement  
8 that Defendants Buckly and Plastina were not independent directors pursuant to  
9 the requirements of the NASDAQ Capital Markets, including NASDAQ  
10 Marketplace Rule 4200(a)(15), and applicable SEC regulations. Additionally,  
11 defendant Buckly lacks independence from defendants Floyd and Mills as they are  
12 defendants who are not disinterested and/or independent and who exert influence  
13 over the compensation for defendant Buckly by virtue of their positions as  
14 members of the Compensation Committee. The Compensation Committee  
15 annually reviews and approves corporate goals and objectives relevant to the  
16 compensation for defendant Buckly evaluates his performance in light of those  
17 goals and objectives, and approves his compensation level based upon these  
18 evaluations. This lack of independence renders defendants Buckly and Plastina  
19 incapable of impartially considering a demand to commence and vigorously  
20 prosecute this action;

21           (b) Defendants face a substantial likelihood of being held liable  
22 for breaching their fiduciary duties of loyalty and good faith as alleged herein, and  
23 are therefore incapable of disinterestedly and independently considering a demand  
24 to commence and vigorously prosecute this action.  
25  
26  
27  
28



(c) The principal professional occupation of Defendant Plastina was his employment with the Company, pursuant to which he received significant compensation from the Company as illustrated more fully below:

<b>2009 EXECUTIVE COMPENSATION</b>						
<b>Executi ve</b>	<b>SALAR Y</b>	<b>Other Compensati on</b>	<b>STOCK AWAR DS</b>	<b>OPTIO N AWAR DS</b>	<b>Non-Equity Incentive Plan Compensati on</b>	<b>TOTAL</b>
Franco Plastina	\$570,00 0	\$9,114	\$1,103,4 00	\$223,44 0	\$766,080	\$2,672,0 34

<b>2008 EXECUTIVE COMPENSATION</b>						
<b>Executi ve</b>	<b>SALAR Y</b>	<b>Other Compensati on</b>	<b>STOCK AWAR DS</b>	<b>OPTIO N AWAR DS</b>	<b>Non-Equity Incentive Plan Compensati on</b>	<b>TOTAL</b>
Franco Plastina	\$570,00 0	\$8,614	\$821,00 0	\$979,88 0	\$940,801	\$3,320,2 95

(d) Tekelec's non-employee directors have received, and continue to receive, substantial compensation in the form of cash and stock option awards. These defendants are also interested in maintaining their positions on the Board so as to safeguard their substantial compensation and stock options. The following charts illustrate the substantial compensation that these directors have received, which demonstrates that demand upon such individuals would be futile:

**2009 DIRECTOR COMPENSATION**

<b>DIRECTOR</b>	<b>FEES EARNED OR PAID IN CASH</b>	<b>STOCK AWARDS</b>	<b>OPTION AWARDS</b>	<b>TOTAL</b>
Ronald W. Buckley	\$54,000	\$127,840	-	\$181,840
David R. Laube	\$62,000	\$127,840	-	\$189,840
Carol G. Mills	\$70,000	\$127,840	-	\$197,840
Krish A. Prabhu	\$62,775	\$127,840	-	\$190,615
Michael P. Ressner	\$74,000	\$127,840	-	\$201,840
Hubert de Pesquidoux	\$38,489	\$287,640	-	\$326,129

**2008 DIRECTOR COMPENSATION**

<b>DIRECTOR</b>	<b>FEES EARNED OR PAID IN CASH</b>	<b>STOCK AWARDS</b>	<b>OPTION AWARDS</b>	<b>TOTAL</b>
Ronald W. Buckley	\$61,505	\$82,415	\$67,826	\$211,746
David R. Laube	\$23,250	\$77,117	-	\$100,367
Carol G. Mills	\$84,640	\$82,415	\$94,588	\$261,643
Krish A. Prabhu	\$39,706	\$116,751	-	156,457
Michael P. Ressner	\$86,600	\$82,415	\$85,051	\$254,066

(e) The entire Tekelec Board and senior management participated in the wrongs complained of herein. For the reasons described herein, Tekelec's directors are not disinterested or independent. Pursuant to their specific duties as Board members, each was charged with the management of the Company and the

1 conduct of its business affairs. Each of the above referenced defendants breached  
2 the fiduciary duties they owed to Tekelec and its shareholders in that they failed to  
3 prevent and correct the dissemination of the Company's false and misleading  
4 statements. Thus, the Tekelec Board cannot exercise independent objective  
5 judgment in deciding whether to bring this action or whether to vigorously  
6 prosecute this action because its members are interested personally in the outcome  
7 because their actions have subjected Tekelec to millions of dollars in potential  
8 liability for violations of applicable securities laws;

9 (f) Defendant Plastina certified certain of Tekelec's SEC filings.  
10 Accordingly, demand is futile as he faces a substantial likelihood of liability for  
11 breach of fiduciary duties owed to Tekelec;

12 (g) Defendants concealed the true scope of Tekelec's financial  
13 health and enabled Defendants Buckley, Everett, Floyd, Plastina, Rush, and Mills  
14 to sell approximately \$8.125 million in Tekelec stock during the Relevant Period;

15 (h) Defendants Ressler, de Pesquidoux, Laube, and Floyd were  
16 aware of the Company's ongoing unlawful and improper business practices and  
17 the dissemination of materially false and misleading statements and, yet, still  
18 permitted the Company to portray to the public the Company's false and  
19 misleading information despite their heightened fiduciary obligations as members  
20 of the Company's Audit Committee. Defendant Ressler served as Chair of  
21 Tekelec's Audit Committee during the Relevant Period and defendants de  
22 Pesquidoux, Floyd, and Laube served as members of Tekelec's Audit Committee  
23 during the Relevant Period. The purpose of Tekelec's Audit Committee was to  
24 assist the Board in fulfilling its oversight responsibilities for financial matters.  
25 Specifically, the Audit Committee was to assist the Board in overseeing: (1) the  
26 integrity of the Company's financial statements; (2) the qualifications,  
27  
28

1 independence, and performance of the Company's independent registered public  
2 accounting firm; (3) the performance of the Company's internal audit function; (4)  
3 the integrity of the Company's systems of internal accounting and financial  
4 controls; and (5) the Company's compliance with legal and regulatory  
5 requirements. The Audit Committee, moreover, is responsible for monitoring the  
6 operation of Tekelec's disclosure committee, reviewing the Company's disclosure  
7 controls and procedures with the Company's CEO and CFO, reviewing Tekelec's  
8 risk management and risk assessment policies, and discussing, at least annually,  
9 with the Company's General Counsel or outside legal counsel, the effectiveness of  
10 the Company's legal compliance programs and other legal matters. Additionally,  
11 the Audit Committee met privately, outside the presence of Tekelec's  
12 management, with the Company's independent registered public accounting firm  
13 to discuss, among other matters, Tekelec's internal accounting control policies and  
14 procedures and the financial statements included in the Company's annual reports  
15 on Form 10-K and quarterly reports on Form 10-Q. As part of its oversight role  
16 with respect to the Company's financial statements and the public disclosure of  
17 the Company's financial results, moreover, the Company's Audit Committee  
18 regularly reviewed and discussed with Tekelec's management the financial  
19 statements included in the Company's annual reports on Form 10-K and quarterly  
20 reports on Form 10-Q, its quarterly earnings releases, and the financial guidance  
21 that the Company provided to analysts, ratings agencies, and the public. The  
22 Audit Committee also met regularly in separate executive sessions with Tekelec's  
23 CFO, Chief Accounting Officer, and other members of the Company's executive  
24 management team. The Company's Audit Committee also operates pursuant to a  
25 written charter approved by the Company's Board, which provides, among other  
26 things, that Audit Committee members must: "[r]eview and discuss with  
27  
28

1 management, at least quarterly, significant issues, estimates, and judgments that  
2 may have a material impact on the Company's financial statements or, internal  
3 controls, or may be a matter of public interest or exposure" and "[r]eview and  
4 discuss with management, prior to release, the Company's earnings press releases  
5 (including the use of non GAAP financial measures therein) as well as financial  
6 information and earnings guidance provided to analysts and rating agencies . . . ."

7 As a result, Defendants Ressler, de Pesquidoux, Floyd, and Laube knew, or  
8 should have known, of the Company's wrongdoing alleged herein, but  
9 intentionally or recklessly violated their duties as members of the Audit  
10 Committee. Specifically, because of these duties and responsibilities –  
11 particularly the Audit Committee's responsibility to discuss the Company's  
12 financial information and earnings guidance with Tekelec's management prior to  
13 release – members of the Audit Committee were aware that Tekelec's positive  
14 statements about the Company's prospects and growth were made without a  
15 reasonable basis. Indeed, through such discussions with Tekelec's management,  
16 the Audit Committee was aware that the Company was experiencing a significant  
17 decline in new orders from India because of security and regulatory issues and  
18 that the Company's customers in emerging markets were facing credit issues that  
19 delayed purchases. As such, Defendants Ressler, de Pesquidoux, Floyd, and  
20 Laube breached their fiduciary duties of loyalty and good faith to the Company.  
21 Additionally, the failure of Defendants Ressler, de Pesquidoux, Floyd, and Laube  
22 to perform their duties as members of the Audit Committee with loyalty and in  
23 good faith raises a substantial likelihood of non-exculpated personal liability on  
24 their part. As a result, Defendants Ressler, de Pesquidoux, Floyd, and Laube  
25 cannot impartially consider a demand on the Board to commence litigation against  
26 themselves;  
27  
28

1 (i) Each of the key officers and directors knew of and/or directly  
2 benefited from the wrongdoing complained of herein thereby rendering demand  
3 futile;

4 (j) The Individual Defendants approved and/or permitted the  
5 wrongs alleged herein to have occurred and participated in efforts to conceal or  
6 disguise those wrongs from Tekelec's stockholders or recklessly and/or  
7 negligently disregarded the wrongs complained of herein, and are therefore not  
8 disinterested parties;

9 (k) In order to bring this suit, all of Tekelec's directors would be  
10 forced to sue themselves and persons with whom they have extensive business and  
11 personal entanglements, which they will not do, thereby excusing demand;

12 (l) The acts complained of constitute violations of the fiduciary  
13 duties owed by Tekelec's officers and directors and these acts are incapable of  
14 ratification;

15 (m) Each of the Individual Defendants authorized and/or permitted  
16 the false statements disseminated directly to the public and which were made  
17 available and distributed to shareholders, authorized and/or permitted the issuance  
18 of various of the false and misleading statements and are principal beneficiaries of  
19 the wrongdoing alleged herein, and thus could not fairly and fully prosecute such  
20 a suit even if they instituted it;

21 (n) Any suit by the Company's current directors to remedy these  
22 wrongs would likely expose the Individual Defendants and Tekelec to further  
23 violations of the securities laws that would result in civil actions being filed  
24 against one or more of the Individual Defendants, thus, they are hopelessly  
25 conflicted in making any supposedly independent determination whether to sue  
26 themselves;  
27  
28



1 (o) Tekelec has been, and will continue to be, exposed to  
2 significant losses due to the wrongdoing complained of herein, yet the Individual  
3 Defendants have not filed any lawsuits against themselves or others who were  
4 responsible for that wrongful conduct to attempt to recover for Tekelec any part of  
5 the damages Tekelec suffered and will suffer thereby; and

6 p. If the current directors were to bring this derivative action  
7 against themselves, they would thereby expose their own misconduct, which  
8 underlies allegations against them contained in a class action complaint for  
9 violations of securities law, which admissions would impair their defense of the  
10 class action and greatly increase the probability of their personal liability in the  
11 class action, in an amount likely to be in excess of any insurance coverage  
12 available to the Individual Defendants. Thus, the Individual Defendants would be  
13 forced to take positions contrary to the defenses they will likely assert in the  
14 securities class action.  
15

16 70. Moreover, despite the Individual Defendants having knowledge of  
17 the claims and causes of action raised by plaintiff, the current Board has failed and  
18 refused to seek to recover for Tekelec for any of the wrongdoing alleged by  
19 plaintiff herein.

20 71. Plaintiff, moreover, has not made any demand on shareholders of  
21 Tekelec to institute this action since demand would be a futile and useless act for  
22 the following reasons:

23 (a) Tekelec is a publicly held company with over 68.5 million  
24 shares outstanding, and thousands of shareholders;

25 (b) Making demand on such a number of shareholders would be  
26 impossible for plaintiff who has no way of finding out the names, addresses of  
27 phone numbers of shareholders; and  
28

1 (c) Making demand on all shareholders would force plaintiff to  
2 incur huge expenses, assuming all shareholders could be individually identified.

3 72. Furthermore, the conduct complained of herein could not have been  
4 the product of good faith business judgment, and each of these directors faces a  
5 substantial likelihood of liability for breaching their fiduciary duties because,  
6 through their intentional misconduct, they have subjected Tekelec to substantial  
7 damages. Furthermore, the conduct of the Individual Defendants has subjected  
8 the Company to potential liability in connection with a securities fraud class  
9 action entitled, *Pipefitters Local No. 636 v. Tekelec, et al.*, Case No. 5:11-cv-  
10 00004-D, currently pending in the United States District Court for the Eastern  
11 District of North Carolina. Through their intentional misconduct, Individual  
12 Defendants have subjected the Company to potential costs, fines, and judgments  
13 associated with the securities class action. Such actions by the Individual  
14 Defendants cannot be protected by the business judgment rule. Accordingly,  
15 making a pre-suit demand on the Individual Defendants would be futile.  
16

17 **COUNT I**  
18 **(AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF**  
19 **FIDUCIARY DUTY)**

20 73. Plaintiff incorporates by reference each of the preceding paragraphs  
21 as though they were set forth in full herein.

22 74. Defendants owed a fiduciary duty to Tekelec to supervise the  
23 issuance of the Company's press releases and public filings to ensure that they  
24 were truthful and accurate and that such filings conformed to applicable securities  
25 laws. Defendants, however, breached their fiduciary duties by failing to properly  
26 supervise and monitor the adequacy of Tekelec's internal controls and by allowing  
27 the Company to issue and disseminate misleading statements and filings.  
28

1       75. Defendants have engaged in a sustained and systematic failure to  
2 exercise their oversight responsibilities and to ensure that Tekelec complied with  
3 applicable laws, rules and regulations.

4       76. As members of the Tekelec Board, the Individual Defendants were  
5 directly responsible for authorizing, permitting the authorization of, or failing to  
6 monitor the practices that resulted in violations of applicable laws as alleged  
7 herein. Each of them had knowledge of and actively participated in, approved,  
8 and/or acquiesced in the wrongdoing alleged herein or abdicated his or her  
9 responsibilities with respect to this wrongdoing. The alleged acts of wrongdoing  
10 have subjected the Company to unreasonable risks of loss and expenses.

11       77. Each of defendants' acts in causing or permitting the Company to  
12 disseminate material misrepresentations and omissions to the investing public and  
13 abdication of his or her oversight responsibilities to the Company have subjected the  
14 Company to liability for violations of applicable laws, and therefore were not the  
15 product of a valid exercise of business judgment, constituting a complete  
16 abdication of their duties as officers and/or directors of the Company. As a result  
17 of defendants' breaches, Tekelec is the subject of a major securities fraud class  
18 action lawsuit by defrauded investors, and the Company's reputation in the  
19 business community and financial markets has been irreparably tarnished.

20  
21                                   **COUNT II**  
22                   **(AGAINST THE INDIVIDUAL DEFENDANTS FOR GROSS**  
23                                   **MISMANGEMENT)**

24       78. Plaintiff incorporates by reference each of the preceding paragraphs  
25 as though they were set forth in full herein.

26       79. Defendants had a duty to Tekelec and its shareholders to prudently  
27 supervise, manage, and control the operations, business, and internal financial  
28 accounting and disclosures of the Company. Defendants, however, by their

1 actions and by engaging in the wrongdoing alleged herein, abandoned and  
2 abdicated their responsibilities and duties with regard to prudently managing the  
3 business of Tekelec in a manner consistent with the duties imposed upon them by  
4 law. By committing the misconduct alleged herein, defendants breached their  
5 duties of due care, diligence, and candor in the management and administration of  
6 Tekelec's affairs and in the use and preservation of the Company's assets.

7 80. During the course of the discharge of their duties, defendants were  
8 aware of the unreasonable risks and losses associated with their misconduct.  
9 Nevertheless, defendants caused Tekelec to engage in the scheme described herein  
10 which they knew had an unreasonable risk of damage to the Company, thus  
11 breaching their duties to the Company. As a result, defendants grossly  
12 mismanaged Tekelec, thereby causing damage to the Company.  
13

14 **COUNT III**  
15 **(AGAINST THE INDIVIDUAL DEFENDANTS FOR CONTRIBUTION**  
16 **AND INDEMNIFICATION)**

17 81. Plaintiff incorporates by reference each of the preceding paragraphs  
18 as though they were set forth in full herein.

19 82. Tekelec is alleged to be liable to various persons, entities and/or  
20 classes by virtue of the facts alleged herein that give rise to defendants' liability to  
21 the Company.

22 83. Tekelec's alleged liability on account of the wrongful acts, practices,  
23 and related misconduct alleged arises, in whole or in part, from the knowing,  
24 reckless, disloyal and/or bad faith acts or omissions of defendants, and the  
25 Company is entitled to contribution and indemnification from each defendant in  
26 connection with all such claims that have been, are, or may in the future be  
27 asserted against Tekelec, by virtue of the Individual Defendants' misconduct.  
28

**COUNT IV**  
**(AGAINST THE INDIVIDUAL DEFENDANTS FOR ABUSE OF**  
**CONTROL)**

84. Plaintiff incorporates by reference each of the preceding paragraphs as though they were set forth in full herein.

85. The Individual Defendants' conduct, as alleged herein, constituted an abuse of their control over Tekelec.

86. As a direct and proximate result of the Individual Defendants' abuse of control, the Company has suffered, and will continue to suffer, damages for which the Individual Defendants are liable. Plaintiff, moreover, has no adequate remedy at law.

**COUNT V**  
**(AGAINST THE INDIVIDUAL DEFENDANTS FOR**  
**WASTE OF CORPORATE ASSETS)**

87. Plaintiff incorporates by reference each of the preceding paragraphs as though they were set forth in full herein.

88. The Individual Defendants' conduct, as alleged herein, constituted a waste of the corporate assets of Tekelec.

89. As a direct and proximate result of the Individual Defendants' abuse of control, the Company has suffered, and will continue to suffer, damages for which the Individual Defendants are liable. Plaintiff, moreover, has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties;

1 B. Awarding to plaintiff the costs and disbursements of the action,  
2 including reasonable attorneys' fees, accountants' and experts' fees, costs, and  
3 expenses; and

4 C. Granting such other and further relief as the Court deems just and  
5 proper.

6 **JURY DEMAND**

7 Plaintiff demands a trial by jury.  
8

9 DATED: March 3, 2011

GLANCY BINKOW & GOLDBERG  
LLP

11 By: 

12 LIONEL Z. GLANCY  
13 EX KANO S. SAMS II  
14 LOUIS BOYARSKY  
15 1801 Avenue of the Stars, Suite 311  
Los Angeles, California 90067  
Telephone: (310) 201-9150  
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16 THE BRISCOE LAW FIRM, PLLC  
17 WILLIE C. BRISCOE  
18 The Preston Commons  
8117 Preston Road, Suite 300  
19 Dallas, Texas 75225  
Telephone: (214) 706-9314  
20 Facsimile: (214) 706-9315

21 *Counsel for Plaintiff Vivian R. Dulberg*  
22  
23  
24  
25  
26  
27  
28



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

**SACV11- 351 JVS (RNBx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☒ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

## Name &amp; Address:

Lionel Z. Glancy (#134180)  
 GLANCY BINKOW & GOLDBERG LLP  
 1801 Avenue of the Stars, Suite 311  
 Los Angeles, CA 90067  
 Telephone: (310) 201-9150

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

VIVIAN R. DULBERG, Derivatively on Behalf of  
 Herself and All Others Similarly Situated,

PLAINTIFF(S)

v.

FRANCO PLASTINA

[See Attachment for Additional Defendants]

DEFENDANT(S).

CASE NUMBER

SACV11-00351 JVS (RNBx)

## SUMMONS

TO: DEFENDANT(S): THE ABOVE-NAMED DEFENDANTS

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Lionel Z. Glancy, whose address is 1801 Avenue of the Stars, Suite 311, Los Angeles, CA 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAR - 3 2011By: CHRISTOPHER POWERS  
Deputy Clerk

(Seal of the Court)



1181

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

## Name &amp; Address:

Lionel Z. Glancy (#134180)  
 GLANCY BINKOW & GOLDBERG LLP  
 1801 Avenue of the Stars, Suite 311  
 Los Angeles, CA 90067  
 Telephone: (310) 201-9150

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

VIVIAN R. DULBERG, Derivatively on Behalf of  
 Herself and All Others Similarly Situated,

PLAINTIFF(S)

v.

FRANCO PLASTINA

[See Attachment for Additional Defendants]

DEFENDANT(S).

CASE NUMBER

SACV11-00351 JVS (RNBx)

SUMMONS

TO: DEFENDANT(S): THE ABOVE-NAMED DEFENDANTS

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐                      amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Lionel Z. Glancy, whose address is 1801 Avenue of the Stars, Suite 311, Los Angeles, CA 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAR - 3 2011By: CHRISTOPHER POWERS  
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**ATTACHMENT TO SUMMONS**

**ADDITIONAL DEFENDANTS:**

**WILLIAM H. EVERETT, GREGORY S. RUSH, MARK A. FLOYD, RONALD W. BUCKLY,  
HUBERT DE PESQUIDOUX, DAVID R. LAUBE, CAROL G. MILLS, KRISH PRABHU,  
AND MICHAEL R. RESSNER**

**-and-**

**NOMINAL DEFENDANT:**

**TEKELEC**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> VIVIAN R. DULBERG, Derivatively on Behalf of Herself and All Others Similarly Situated,	<b>DEFENDANTS</b> FRANCO PLASTINA, WILLIAM H. EVERETT, GREGORY S. RUSH, MARK A. FLOYD, RONALD W. BUCKLY, HUBERT DE PESQUIDOUX, DAVID R. LAUBE, CAROL G. MILLS, KRISH PRABHU, MICHAEL R. RESSNER and  TEKELEC, Nominal Defendant
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Lionel Z. Glancy (#134180) Glancy Binkow & Goldberg LLP 1801 Avenue of the Stars, Suite 311, Los Angeles, CA 90067, T. (310) 201-9150	<b>Attorneys (If Known)</b>

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input checked="" type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding    
 ☐ 2 Removed from State Court    
 ☐ 3 Remanded from Appellate Court    
 ☐ 4 Reinstated or Reopened    
 ☐ 5 Transferred from another district (specify):    
 ☐ 6 Multi-District Litigation    
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:** JURY DEMAND: ☒ Yes   ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:** ☐ Yes   ☒ No    
 **MONEY DEMANDED IN COMPLAINT:** \$ to be proved

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. §1332(a)(2) and 28 U.S.C. §1391(a) - Breach of Fiduciary Duty; Gross Mismanagement; Abuse of Control; Waste of Corporate Assets

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER</b> <b>PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FOREFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

SACV11-00351

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	New York, NY

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	All Defendants - Morrisville, North Carolina

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County, CA	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved**

**X. SIGNATURE OF ATTORNEY (OR PRO PER):** Shi J. Y. **Date** March 3, 2011

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))